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Submitted via Parliament of Australia website

Committee Secretary

Parliamentary Joint Committee on Intelligence and Security

PO Box 6021

Parliament House

Canberra ACT 260012 February 2021

28 February 2022

Dear Sir/Madam,

Review of the Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022

AGL Energy (AGL) welcomes the opportunity to provide feedback to the Parliamentary Joint Committee on Intelligence and Security on the Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022.

AGL is a leading integrated essential services provider with a proud 184-year history of innovation and a strong vision of human and technological advancement. We deliver gas, electricity, and telecommunication services to millions of customers throughout Australia and operate Australia's largest electricity generation portfolio. AGL has a strong history of working collaboratively with both state and federal governments to ensure that it has appropriate risk management practices and plans are in place to maintain business continuity and the provision of its essential services to the community.

Did you provide feedback on the exposure draft, and do you feel like consultation was inclusive and wide-ranging?

AGL has been involved in the consultation process since August 2020 and has provided feedback to each consultation including the latest exposure draft. AGL appreciates the time and effort required of the Department to facilitate the consultative process to develop and refine these reforms over the past 12 months. The changes made with regards to the legislative framework and associated rules after the Parliamentary Joint Committee on Intelligence and Security (PJCIS) report and supporting recommendations on the Security Legislation Amendment (Critical Infrastructure) Bill 2021, demonstrate the Department's willingness to respond to industry feedback and balance the commercial impacts with the need for a security uplift in the energy sector.

Has your feedback been incorporated in the Bill or addressed in explanatory material?

Some of AGL's feedback was addressed in the PJCIS report on the SOCI Bill 2021 but there is some outstanding feedback regarding the change of the threshold for a critical electricity asset down to 30MW, further detail on the application of the enhanced cyber security obligations and what would trigger the imposition of these obligations and more specific timelines on when obligations will be expected to be complied with. Noting that for many obligations a 6-month grace period is simply not



sufficient to design and implement new systems and processes across a broad range of business functions.

What are your five key themes of feedback on the Bill?

AGL's five key themes regarding the SCALPI Bill are as follows:

- 1) **Need for clear definition of 'effective governance'**: AGL agrees that governance and oversight are critical aspects of an effective risk management program, but request that the Department and CISC specify what is meant by 'robust assurance and review process' as referenced in the Explanatory Document. AGL recommends that this be clarified as uncertainty over the required method and extent of assurance may result in significant cost and difficulties in assessing compliance, in addition to providing Boards and Executive Management confidence that what is in place from an 'assurance and review process' perspective meets the expectations of the Department and CISC.
- 2) **Clarifying expectations regarding annual reporting for Year 1 and timelines for implementation**: AGL recommends that the reporting requirements for the first year of the risk management program be modified to a 'readiness attestation' regarding readiness to comply with the requirements of the Act. This will assist responsible entities in preparing for annual reporting to the Department, particularly given the timeline for passing the SLACIP Bill and the first reporting cycle under the Act is not yet known, and the resources required to facilitate compliance with these obligations may vary from a few months to a year.
- 3) **Rationale for significant change to the current critical electricity asset threshold**: Although AGL notes that the new critical infrastructure asset thresholds are already in force under the *Security of Critical Infrastructure (Definitions) Rules 2021*, we maintain that an asset with a nameplate generation capacity of 30 megawatts does not materially contribute to the stability of the system. Based on our preliminary analysis and as an experienced generator in the NEM, AGL suggests at a minimum that a threshold equal to or greater than 500 megawatts is more appropriate when considering the criticality of an asset on the system security and resilience of the NEM. This would also assist with the direction of resources and funding to those most critical assets rather than smaller insignificant assets such as those of 30MW. Given the above, AGL suggests that the definition threshold for a critical electricity asset be reviewed on the anniversary of the rules coming into force to ensure that the threshold is adequate for the Department's stated objectives of system security and resilience.
- 4) **Further guidance on the conditions that may lead to activation of provisions**: As the Enhanced Cyber Security Obligations are based on the discretion of the Secretary, is the Department or the CISC planning to provide any guidance or any indications on the conditions (or timing) that may lead to the activation of these specific provisions? And how those conditions relate specifically to the critical infrastructure assets. Many of the elements of the enhanced cyber security obligations would have funding and implementation lead times so they may not be available immediately after the provision of notice by the Secretary. Further guidance on these obligations would be helpful.
- 5) **Further clarity on criteria for designation of SONS**: The definition regarding designation of SONS by the Minister requires further clarification. AGL suggests that the criteria being assessed when considering impacts to social and economic stability should an incident materialise on an asset be provided, so that it is clear to responsible entities the basis for which the Minister is designating an asset as SONS.



Do you think the potential regulatory impact has been captured accurately?

An initial qualitative Regulatory Impact Statement (RIS) was undertaken by the Department, and it was proposed that a more detailed RIS with quantitative cost-benefit assessment with respect to the Positive Security Obligation (PSO) component would be undertaken. However, AGL has not seen either version of the RIS although it is referenced by the Department of Home Affairs in their submission to this inquiry. There is slightly more clarity available now on the requirements of the Risk Management Program since the publication of the Exposure Draft of the Bill however there remain uncertainty about timelines, what obligations will be turned on by the Minister of Home Affairs/Secretary of Home Affairs and the timeline for implementation of many of the aspects of the SOCI legislation. As a result of these uncertainties and the absence of a comprehensive RIS, AGL is concerned that the proposed reforms and legislation have not been subject to a proper cost-benefit assessment, especially given reforms have some wide-ranging impacts on many sectors. The absence of a necessary cost benefit analysis is not in line with the Federal Government's Best Practice RiS process, particularly the open and transparent publication of the RiS. The publication of the RiS should be part of the reform process to ensure that the draft legislation is not analysed retrospectively and that any unintended consequences are identified early, with the least cost mitigation measures put in place to alleviate these consequences.

On balance, do you support the Bill in its presented form, recognising the risks facing critical infrastructure assets in Australia?

AGL is broadly supportive of the efforts of the Department of Home Affairs and the Minister to implement the findings of the Cybersecurity Strategy 2020 and assist with the security posture uplift across critical infrastructure industries. However, as noted above we still have some underlying concerns and would appreciate further details being provided by the Department and the CISC so that progress towards responding to the requirements of the Act can occur with absolute clarity.

If you would like to discuss any aspects of our response further, please contact Marika Suszko, Wholesale Markets Regulation Manager at [REDACTED]

Yours sincerely,

Elizabeth Molyneux

General Manager, Policy and Energy Market Regulation